IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-401

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 922, *et al.*,

Petitioners,

—v.—

STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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The petitioners seek a writ of certiorari to review a judgment of the Appellate Division of the Supreme Court of the State of New York, Second Department, entered April 25, 1977, which unanimously affirmed a judgment of the State Supreme Court, Kings County, dated Feb. 28, 1977 which, after a non-jury trial, enjoined public employees from engaging in a strike against respondent's transit facilities. The Court of Appeals of the State of New York on June 16, 1977 denied petitioners leave to appeal to that Court (42 NY2d 804).

Opinions Below

The opinion of the Appellate Division of the Supreme Court of the State of New York, Second Department, is reported at 57 AD 2d 614, 393 NYS 2d 773 (1977).

The opinion of the Supreme Court of the State of New York, Kings County, dated February 28, 1977, not yet officially reported, is set forth as Appendix C to the petition.

The opinion of the Appellate Division of the Supreme Court of the State of New York, Second Department dated February 8, 1977, directing a trial, is reported at 56 AD 2d 585, 390 NYS 2d 1021 (1977).

The opinion of the United States District Court for the Eastern District of New York, and the opinion of the Supreme Court, Kings County, dated January 27, 1977 are unreported but appear as Appendices E and F annexed to the petition.

Question Presented

When the procedures of the Railway Labor Act (45 U.S.C. §151 et seq.) have been exhausted, can a strike by public employees be enjoined under State law where the employees operate a publicly owned commuter rail line whose connection with interstate commerce is tenuous?

We argue that the State courts were correct in granting the injunction since the Railway Labor Act does not give public employees the right to strike and could not constitutionally do so under the facts of this case.

Statement of the Case

The respondent, Staten Island Rapid Transit Operating Authority ("SIRTOA"), is a public benefit corporation established pursuant to §1266, subd. 5 of the New York

Public Authorities Law and is a subsidiary of the Metropolitan Transportation Authority of the State of New York.

SIRTOA operates the only rail passenger service in the Borough of Staten Island on a line about 14 miles long. It has approximately 250 employees represented by 13 unions and carries approximately 15,000 passengers each weekday.

SIRTOA carries no freight, connects with no interstate passenger carrier and crosses no state lines.

The line is owned by the City of New York, which acquired it from the Staten Island Rapid Transit Railway Company, a subsidiary of the Baltimore and Ohio Railroad (B&O). By agreement of lease and operating agreement made as of the 20th day of July, 1970 the City turned this line over to SIRTOA for operation. The B&O retained trackage rights under which it now operates one freight train per day, with B&O personnel and equipment, serving one regular customer. The freight operation was unaffected by a four month strike of SIRTOA employees in 1975.

The City of New York provides subsidies to pay SIRTOA's capital expenses and operating deficits. Because of this financial relationship, SIRTOA is a "covered organization" as that term is defined in the New York State Financial Emergency Act for the City of New York and is subject to the wage freeze and financial limits set forth in that act (Chapter 868 of the New York Laws of 1975). As a subsidiary of the Metropolitan Transportation Authority it is regarded under state law as performing an "essential governmental function" in carrying out its purposes (Public Authorities Law §1264, subdivision 2).

Since the predecessor operator of this railway line was part of the B&O Railroad system, the employees of

SIRTOA historically negotiated under provisions of the Railway Labor Act. This Act is still applicable to them. In fact, negotiations under the Act were carried on for over two years.

On December 15, 1976 the National Mediation Board gave notice that its services had terminated under the provisions of the Railway Labor Act; thus all the procedures provided for under the Railway Labor Act were exhausted.

On Monday, January 17, 1977 at 6 a.m., 48 SIRTOA employees commenced a strike. These employees are members of five unions which comprise petitioners' System Federation No. 1. Since SIRTOA is a public employer as that term is defined in the New York State Civil Service Law, §201, subd. 6, notice of the strike was given to the New York Attorney General, who forthwith applied for injunctive relief (see New York Civil Service Law, §200 et seq., known as the Taylor Law).

On January 17, 1977, Judge Irwin Brownstein in Kings County Supreme Court issued a temporary restraining order and the employees returned to work late in the afternoon of that day. Subsequently, Judge Brownstein vacated the temporary restraining order and refused to issue a temporary injunction. The New York State Appellate Division, Second Department, by order dated February 8, 1977, unanimously reversed Judge Brownstein's order and directed an immediate trial.

The petitioners' attorneys removed this action to the United States District Court, Eastern District of New York. A trial was held on February 4, 1977 before District Judge Jack B. Weinstein. Judge Weinstein in his findings

of fact and law said that the connection of SIRTOA to interstate commerce was "tenuous" and that federal courts should abstain from deciding state and local issues. Accordingly he remanded the case to the state court.

Pursuant to an order of the Appellate Division, Second Department, a trial was held before Judge Thomas R. Jones on February 15th and 16th. On February 28th he issued a memorandum decision and judgment enjoining the petitioners from striking.

Petitioners appealed to the Appellate Division, which unanimously affirmed the judgment of the trial court. The Court based its determination primarily on the following findings of fact: SIRTOA is "essentially an intrastate passenger or commuter operation, fully akin to the City's rapid transit system . . ."; it is "not a vital link in the national transportation system, the continued operation of which is important to the national flow of commerce . . ."; the "connection between SIRTOA and interstate commerce is extremely tenuous . . ." The Court also found that this dispute "does not present problems of national or even regional magnitude, which problems would require uniform treatment on a national scale." (57 AD 2d 614).

Petitioners sought leave to appeal to the New York State Court of Appeals. That Court, by order dated June 16, 1977, denied leave (see Appendix A annexed to petition).

ARGUMENT

No substantial federal question is presented.

The New York Appellate Division based its decision (57 AD 2d 614) on findings of fact with respect to a unique local situation involving local government employees. The Court said (p. 616):

> "• • • balancing SIRTOA's minimal and tenuous connection to interstate commerce exemplified by one freight run per day for the convenience of one customer, against the State's direct and compelling interest in preventing strikes by public employees and ensuring the continuation of commuter rail service for thousands of Staten Island residents, it is clear that these public employees may properly be enjoined, under the Taylor Law, from striking against SIRTOA as a means of 'self help' in their continuing dispute."

The determination by the State courts should not be reviewed by this Court.

There is no interference with the applicability of federal statutes to these employees; the facts show that all the procedures of the Railway Labor Act had been exhausted before provisions of state law were invoked.

This Court in *Machinists* v. *Wisconsin Emp. Relations Commission*, 427 U.S. 132 (1976), said (p. 136):

> "Federal labor policy as reflected in the National Labor Relations Act, as amended, has been construed not to preclude the States from regulating aspects of labor

> relations that involve 'conduct touch[ing] interests so deeply rooted in local feeling and responsibility that . . . we could not infer that Congress had deprived the States of the power to act' *San Diego Unions* v. *Garmon*, 359 U.S. 236, 244 (1959)."

Clearly, the right of local government employees to carry on a strike against a public agency so as to deprive thousands of commuters of their only means of local rail transportation is a matter deeply rooted in local feeling and responsibility. Prohibitions against such strikes are found in the common law of this State. Nothing contained in the Railway Labor Act gives public employees of a local agency the right to strike. See *National League of Cities* v. *Usery*, 426 U.S. 833 (1976) as to the limited power of Congress to act in a fashion that impairs the States' ability to function effectively in a federal system.

The cases relied upon by petitioners, particularly *Brotherhood of Railway Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969) and *California* v. *Taylor*, 353 U.S. 553 (1957), which involved State-owned railroads engaged in interstate commerce are not in point as they (1) do not concern strikes by local government employees, and (2) involve controversies having a substantial impact on interstate commerce.

The judgment sought to be reviewed affects only a tiny intrastate passenger line with about 250 employees. The judgment is based on a complex factual situation unlikely to be duplicated elsewhere.

There is no federal question involved here that warrants review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: October 7, 1977

Respectfully submitted,

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